



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0069; FRL-10021-35-Region 3]

Air Plan Approval; Delaware; Nonattainment New Source Review Requirements for 2015

8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This SIP revision will fulfill Delaware's nonattainment new source review (NNSR) SIP element requirement for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2021-0069 at <https://www.regulations.gov>, or via email to Opila.MaryCate@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission

(i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Amy Johansen, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Ms. Johansen can also be reached via electronic mail at Johansen.Amy@epa.gov.

SUPPLEMENTARY INFORMATION: On August 3, 2020, DNREC submitted on behalf of the state of Delaware a formal SIP revision, requesting EPA's approval of its NNSR Certification for the 2015 8-hour ozone NAAQS. Delaware is certifying that its existing NNSR program, covering the Delaware portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Philadelphia Area) nonattainment area (which includes New Castle County) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 Code of Federal Regulations (CFR) 51.165, as amended by the final rule titled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (SIP Requirements Rule), for ozone and its precursors. See 83 FR 62998 (December 6, 2018).

I. Background

On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR 50.19, the 2015 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as

nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Philadelphia Area was classified as marginal nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018 (effective August 3, 2018) using 2014-2016 ambient air quality data. 83 FR 25776. On December 6, 2018, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. 83 FR 62998 (December 6, 2018). Areas that were designated as marginal ozone nonattainment areas are required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021. 40 CFR 51.1303 and 83 FR 10376 (March 9, 2018).

Based on initial nonattainment designations for the 2015 8-hour ozone NAAQS, as well as the December 6, 2018 final SIP Requirements Rule, Delaware was required to develop a SIP revision addressing specific CAA requirements for the Philadelphia Area, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2015 8-hour ozone NAAQS (i.e., August 3, 2021). See 83 FR 62998 (December 6, 2018). In this action, EPA is only proposing to approve Delaware's August 3, 2020 NNSR Certification SIP revision.¹ EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2015 8-hour ozone NAAQS is provided in Section II of this rulemaking action.

II. Summary of SIP Revision and EPA Analysis

This rulemaking is specific to Delaware's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.² The specific NNSR

¹ In addition to certifying its NNSR program, DNREC's August 3, 2020 SIP submittal contains information certifying its Emission Statement Program and requirements for reasonable available control technology (RACT). While DNREC's submittal contains information regarding these other requirements, each requirement was submitted as standalone SIP revisions for separate EPA action.

² See CAA sections 172(c)(5), 173 and 182.

requirements for the ozone NAAQS are codified at 40 CFR 51.160–165.

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are set forth in 40 CFR 51.165. These NNSR program requirements include those promulgated in the “Phase 2 Rule” implementing the 1997 8-hour ozone NAAQS (70 FR 71611 (November 29, 2005)), the 2008 Ozone NAAQS SIP implementation Rule (80 FR 12264, March 6, 2015) and the 2015 SIP Requirements Rule (83 FR 62998, December 6, 2018). Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for oxides of nitrogen (NO_x) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(I) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(I)-(2); provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9).

Delaware’s SIP approved NNSR program, established in Title 7 Delaware Administrative Code (DE Admin Code) 1125 (*Requirements for Preconstruction Review*), applies to the construction and modification of major stationary sources in nonattainment areas. In its August 3, 2020 SIP revision, Delaware certifies that the version of Title 7 DE Admin Code Section 1125 approved in the SIP is at least as stringent as the Federal NNSR requirements for the Philadelphia Area.³ EPA last approved Delaware’s major NNSR program as being consistent

³ On October 20, 2016, EPA disapproved a proposed SIP revision that sought to include additional ERC provisions, adopted by Delaware on December 11, 2016, into the Delaware SIP, specifically, 7 DE Admin Code 1125 Sections 2.5.5 and 2.5.6. 81 FR 72529. Since EPA disapproved these provisions, the previously approved provisions that

with Federal NNSR requirements on August 12, 2019. 84 FR 39758 (August 12, 2019). In that action, EPA approved DNREC's 2008 Ozone Certification SIP revision, which is analogous to EPA's proposed approval of this action. Since EPA's August 12, 2019 approval, DNREC has made one change to its regulations (related to EPA's modeling guidance), which EPA approved into DNREC's SIP on May 1, 2020. 85 FR 25307. Approval of that action, which revised Prevention of Significant Deterioration (PSD) provisions, does not impact DNREC's certification or EPA's proposed approval of DNREC's August 3, 2020 SIP submittal.

Delaware has chosen not to include certain optional NNSR provisions that EPA could approve, pertaining to emissions change of VOC in extreme nonattainment areas and emission reduction credits. Delaware's choice not to include these provisions does not affect EPA's determination regarding the approvability of its August 3, 2020 submittal, and they will not be discussed in this rulemaking.⁴

III. Proposed Action

EPA's review of this material indicates that Delaware's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. EPA is proposing to approve the Delaware's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Philadelphia Area, which was submitted on August 3, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

EPA approved into Delaware's SIP on October 2, 2012 remain applicable Federal requirements. 77 FR 60053.

⁴ DNREC provided information regarding anti-backsliding in its August 3, 2020 SIP submittal to EPA, which was not a requirement of EPA's 2015 Ozone SIP Requirements Rule. See 83 FR 62998 (December 6, 2018). EPA noted in the 2015 Ozone SIP Requirements Rule that it would address anti-backsliding in a future rulemaking action; therefore, EPA will not be acting on anything related to anti-backsliding in this action.

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, approving Delaware's 20015 8-hour ozone NAAQS Certification SIP revision for NNSR, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Transportation, Volatile organic compounds.

Dated: March 15, 2021

Diana Esher
Acting Regional Administrator
Region III.